95-1222

Supreme Court, U.S.
FILED
JAN 30 1996
CLERK

CASE NO. _____

SUPREME COURT OF THE UNITED STATES
October Term 1995

CLARENCE N. S. SHAK, Plaintiff (Appellant),

vs.

KEITH TANAKA, individually and as a police officer in the City and County of Honolulu, State of Hawaii,

MICHAEL NAKAMURA, individually and as the Chief of Police of the City and County of Honolulu, State of Hawaii,

KATHERINE DASHIELL, individually and as a Judge in the District Court of the First Circuit, State of Hawaii,

SABRINA MCKENNA, individually and as a Judge in the District Court of the First Circuit, State of Hawaii,

KEITH KANESHIRO, ESQ. individually and as the Prosecuting Attorney for the City and County of Honolulu, State of Hawaii, and

STATE OF HAWAII,
Defendants (Appellees).

Petition for Writ of Certiorari to
the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Submitted by CLARENCE SHAK, Appellant pro se
610 Cooke Street, Apt. No. 211, Honolulu, Hawaii 96813
Telephone No. (808) 591-0108

QUESTIONS PRESENTED

I - May a state, without violating the right to personal liberty guaranteed to all persons in the United States by the Fourth Amendment of the U. S. Constitution, arrest and take into custody a person (such as Plaintiff-Appellant in the instant case) who has been observed by a police officer committing an act which the officer believes to be a crime and put him or her on trial without any determination having been made in the case by any judicial officer that probable cause existed to believe that that person had committed a crime?

II - May a state, without disregarding the right secured to all persons in the United States by the Fourteenth Amendment of the U. S. Constitution to enjoy immunity from being deprived of liberty or property without due process of law, put a person (such as Plaintiff-Appellant in the instant case) on trial in a court of law and sentence that person to pay a fine if found guilty as charged without that court having jurisdiction over the offense charged?

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JURISDICTIONAL STATEMENT

This petition for a writ of certiorari is hereby being presented to this Court to review a judgment filed and entered in the United States Court of Appeals for the Ninth Circuit on August 22, 1995.

An order was filed on December 1, 1995 denying a petition for rehearing which had been filed in this case on September 5, 1995.

The statutory provision believed to confer on this Court jurisdiction to review the above mentioned judgment is Title 28 of the U. S. Code, §1254(1) which provides that cases in the courts of appeal may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of a judgment or decree.

CONSTITUTIONAL PROVISIONS , STATUTES, AND REGULATIONS INVOLVED IN THIS CASE

UNITED STATES CONSTITUTION

Amendment 4

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 14

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE

Title 28

§1254

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of a judgment or decree.

§1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Title 42

§1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. [R.S. §1979; Dec. 29, 1979, P. L. 96-170, §1, 93 Stat. 1284.]

HAWAII REVISED STATUTES

§291C-76 - Pedestrians on roadways

(a) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway, bicycle lane, or bicycle path.

(b) Where sidewalks are not provided any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction. [L1971, c150, pt of §1; am L 1977, c180 § 4]

§291C-77 - Pedestrians soliciting rides, business or attention of motorist

(a) Except as otherwise provided by county ordinance, no person shall stand in, walk along, or otherwise occupy a portion of a highway for the purpose of soliciting a ride, employment, business, or contributions from the occupant of any vehicle.

(b) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

(c) Except as otherwise provided by county ordinance, no person shall hold or display a movable sign within the right-of-way boundaries of a public highway or on the sidewalk abutting a public highway or in an area adjacent to the highway for the purpose of carrying on political campaign activities as defined in section 19-6(7) and which seek to draw the attention of occupants of motor vehicles using the highway. A movable sign is any portable device, display, emblem, billboard, notice, picture, painting or writing, other than official signs placed or required by the state or county. [L 1971, c150, pt of §1; am L 1973, c 216 §2]

§291C-172 - Refusal to provide identification

Any person detained for a violation of this chapter shall provide the person's name and address, or any proof thereof, or both, upon the lawful order or direction of any police officer in the course and scope of the officer's duties pursuant to this chapter. [L 1978, c111, pt of §2, am L 1984, c215 §1]

HAWAII RULES OF PENAL PROCEDURE

Rule 5

(b) Offenses Other Than Felony

(1) Arraignment

In the district court, if the offense charged against the defendant is other than a felony, the complaint shall be filed or the oral charge stated, a copy of such charge and any affidavits in support thereof shall be furnished the defendant upon his request, and proceedings shall be had in accordance with this section (b). Arraignment shall be in open court and shall consist of the reading of the complaint or the statement of the oral charge to the defendant, or stating to him the substance of the charge and calling on him to plead thereto. In addition to the requirements of Rule 10.1, the court shall in appropriate cases inform the defendant that he has a right to jury trial in the circuit court or may elect to be tried without a jury in the district court.

STATEMENT OF THE CASE

On December 23, 1993, at approximately 4:45 pm, in the City and County of Honolulu, State of Hawaii, CLARENCE N. S. SHAK, Plaintiff-Appellant in this case (hereinafter called Plaintiff) was arrested and taken into custody by Defendant-Appellee Police Officer Keith Tanaka (hereinafter referred to as Officer Tanaka) for having violated Hawaii Revised Statutes (hereinafter "HRS") §291C-76 (Pedestrians on Roadways), HRS §291C-77 (Pedestrians soliciting rides, business or attention of motorist) and HRS §291C-172 (Refusal to provide identification). This arrest of Plaintiff by Officer Tanaka was made without any warrant having been issued for Plaintiff's arrest.

After Plaintiff was arrested, he was transported to the Honolulu Police Station where he was fingerprinted, booked, and then incarcerated in a jail cell. By posting sixty dollars in bail, Plaintiff secured his pre-trial release from custody at approximately 6:30 pm that same day on the condition that he appear for his arraignment set to be heard in the District Court of Honolulu, State of Hawaii, on December 29, 1993.

At Plaintiff's appearance in the District Court of Honolulu on December 29, 1993, Plaintiff asked the court, Defendant-Appellee Judge Dashiell presiding, to produce the formal accusation or accusations, if any had been filed in that court, charging Plaintiff with the commission of any act or acts which violated any law. When the court was unable to produce any written accusation, not even an affidavit, citation, complaint or information, Plaintiff called the court's attention to the fact that the court lacked jurisdiction over the subject-matter in the case and therefore did not have the power to proceed any further in the case.

Evidently having decided that the court did have subject-matter jurisdiction in the case, Judge Dashiell instructed the Deputy Prosecuting Attorney who was prosecuting the case to proceed with the case by reading to Plaintiff the offenses he had been accused by Officer Tanaka of having committed. The Deputy complied by reading to Plaintiff directly out of the law books the description of the offenses he had been accused of having committed.

After Plaintiff declined to enter a plea to the charges so read to him, Judge Dashiell took it upon herself to enter a plea of "Not Guilty" on Plaintiff's behalf. Plaintiff was thereafter issued a written order from the District Court of the First Circuit, State of Hawaii (also known as the District Court of Honolulu) to appear for his trial on March 17, 1994.

At Plaintiff's appearance for his trial in the District Court of Honolulu on March 17, 1994, Defendant-Appellee Judge Sabrina McKenna (hereinafter referred to as Judge McKenna) presiding, Plaintiff asked the court to produce the formal accusation or accusations, if any had been filed in that court, charging Plaintiff with the commission of any act or acts which violated any law. When the court was unable to produce any written accusation, not even an affidavit, citation, complaint or information, Plaintiff moved to have his case dismissed on the grounds that the court lacked jurisdiction over the subject matter in this case. This motion was denied by Judge McKenna.

Judge McKenna then instructed the Deputy Prosecuting Attorney who was prosecuting the case to proceed with the case by reading to Plaintiff the offenses he had been accused of committing. The Deputy complied by reading to Plaintiff directly out of the law books the description of the offenses he had been accused of having committed. After Plaintiff declined to enter a plea to the

charges so read to him, Judge McKenna took it upon herself to enter a plea of "Not Guilty" on Plaintiff's behalf. The court then proceeded to put Plaintiff on trial.

At the trial of Plaintiff, Officer Tanaka testified as to what he had witnessed Plaintiff doing on December 23, 1993 which led him to believe that Plaintiff had violated certain laws of the state of Hawaii. Based on the testimony of Officer Tanaka, Judge McKenna found Plaintiff guilty of the three charges which had been orally read to him by the Deputy Prosecuting Attorney but which were not supported by any written document and sentenced Plaintiff to pay a total fine of approximately thirty five dollars for having committed those three offenses.

This conviction of Plaintiff was not appealed.

A Complaint was filed by Plaintiff on April 14, 1994 in the U. S. District Court for the District of Hawaii against all named Defendants in this case seeking judgment against them for general and punitive damages for having deprived Plaintiff, under color of law, of his personal liberty and his property without conforming to due process of law in violation of the Fourth and Fourteenth Amendments to the U. S. Constitution.

Title 28 of the U. S. Code, §1331, which gives U. S. district courts original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States and Title 42 of the U. S. Code, §1983, which provides that the Defendants in this case are liable to any person, such as Plaintiff in this case, if they, under color of law, subject that person, or cause that person to be subjected, to being deprived of any right, privilege or immunity secured to him or her by the Constitution of the United States provide the basis for federal jurisdiction in the United States District Court for the District of Hawaii in this case.

On July 27, 1994, after a hearing was held on a Motion to Dismiss or in the alternative a Motion for Summary Judgment filed by Defendants, the U. S. District Court for the District of Hawaii found that there was "nothing wrong with the procedure that was followed" by Defendants in depriving Plaintiff of his liberty and property so ordered that Defendant's Motion for Summary Judgment be granted. This order was filed with the U. S. District Court on August 9, 1994. A Summary Judgment was thereafter entered in the U. S. District Court in this case in favor of Defendants against Plaintiff and it was further ordered that all claims against all Defendants were dismissed with prejudice.

On August 19, 1994, a Notice of Appeal was filed with the U. S. District Court for the District of Hawaii by Plaintiff appealing to the United States Court of Appeals for the Ninth Circuit from the Summary Judgment entered against him in this case on August 12, 1994.

On August 22, 1995, a judgment was rendered by the United States Court of Appeals for the Ninth Circuit affirming the Summary Judgment entered against Plaintiff in this case by the U. S. District Court for the District of Hawaii on August 12, 1994.

On December 1, 1995, an order was filed in the U. S. Court of Appeals for the Ninth Circuit denying a petition for rehearing which had been filed in this case in that court on September 5, 1995.

On December 14, 1995, the judgment filed and entered on August 22, 1995 in the U. S. Court of Appeals for the Ninth Circuit affirming the judgment of the U. S. District Court in this case was filed in the U. S. District Court.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI

It is here believed that a writ of certiorari should be allowed in the instant case because the United States Court of Appeals for the Ninth Circuit has rendered a decision on the two federal questions hereby being presented to this Court in a way that clearly conflicts with applicable decisions already made by this Court.

This Court, for instance, has already answered in the negative in more than one of its decisions the question of whether a state may, without violating the right to personal liberty guaranteed to all persons in the United States by the Fourth Amendment of the U. S. Constitution, arrest and take into custody a person (such as Plaintiff-Appellant in the instant case) who has been observed by a police officer committing an act which the officer believes to be a crime and put him or her on trial without any determination having been made in the case by any judicial officer that probable cause existed to believe that that person had committed a crime.

In *Gerstein v. Pugh*, 420 U.S. 103 at 114, 125 (1975), this Court first established that "...the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty. Accordingly, we hold that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest ... and this determination must be made by a judicial officer either before or promptly after arrest."

In *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), this Court not only reinforced its holding made in *Gerstein* that anyone arrested without a warrant was entitled to a judicial determination of probable cause "promptly after

arrest" but also established guidelines to clarify the meaning of the word "promptly" as used in *Gerstein*. In its decision in *County of Riverside*, this Court established that if a person had become entitled to a judicial determination of probable cause promptly after an arrest, such a determination did not have to be made "immediately" after the arrest has been made but could be made as long as 48 hours after a person had been so arrested and still, in general, meet the test of having been made "promptly."

In the instant case, the uncontroverted facts reveal that although Plaintiff-Appellant was arrested without a warrant, no judicial officer ever subsequently made any determination that there was probable cause to believe that Plaintiff-Appellant had committed any offense. Yet the Ninth Circuit Court of Appeals, apparently in knowing disregard of the decisions rendered by this Court in *Gerstein* and in *County of Riverside*, affirmed the decision of the U. S. District Court of the District of Hawaii that there was "nothing wrong" with the way that the state had arrested and taken Plaintiff-Appellant into custody and had put him on trial even though no judicial determination had ever been made that there was probable cause to believe that he had committed any offense.

This Court has already also clearly answered in the negative the second question hereby being presented to this Court as to whether a state may, without disregarding the right secured to all persons in the United States by the Fourteenth Amendment of the U. S. Constitution to enjoy immunity from being deprived of liberty or property without due process of law, put a person (such as Plaintiff-Appellant in the instant case) on trial in a court of law and sentence that person to pay a fine if found guilty as charged without that court having jurisdiction over the offense charged.

It is here understood that in *Albrecht v. United States*, 273 U.S. 1 at 8 (1927), this Court held that if there is filed in any court an "appropriate accusation" of an accused person, such as by the filing of an indictment or information, that court thereby acquires jurisdiction over the offense that that person is accused of having committed so that if thereafter the accused person makes a court appearance, voluntary or otherwise, that court thereby acquires jurisdiction over the person of the defendant. However, this Court cautioned, "A person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court. Compare *Ex parte Bain*, 121 U.S. 1."

It is here evident that this Court, in *Albrecht*, by making the above cautionary statement meant that unless a formal and sufficient accusation is in writing--like an indictment or information--so that it could be filed and has been filed with a certain court, that court has not acquired any power (jurisdiction) to proceed with hearing any certain case where a person may "be punished for a crime."

This rule, in effect, is the same as the rule this Court established in the *Bain* case where since a change had been made in the original indictment issued by a grand jury, this Court held that the changed indictment was "no longer an indictment of a grand jury." Therefore, this Court said at page 13 of *Bain*, since there was no longer any indictment [or written accusation] filed in the case, "...the jurisdiction of the offense is gone, and the court has no right to proceed any further in the progress of the case for want of an indictment [or written accusation]...The power of the court to proceed to try the prisoner is as much arrested as if the indictment [or written accusation] had been dismissed or a *nolle prosequi* had been entered."

Before this court rendered its decision in the *Albrecht* case, its finding in the *Bain* case with respect to the absence of jurisdiction of a court over an offense which did not have a written accusation filed with that court accusing a certain person of having committed that certain offense was limited in its application to cases involving capital or otherwise infamous crimes. However, the decision this Court rendered in *Albrecht* left no doubt that in order for any court to be able to proceed with hearing any case in which any person is accused of having committed any certain offense, that court must first acquire jurisdiction over the offense charged and that jurisdiction is acquired only by having a formal written accusation against a certain person filed with that court.

In the instant case, the uncontroverted facts reveal that no written accusation was ever filed against Plaintiff-Appellant in any court accusing him of having committed the offenses he was orally charged with having committed, yet the trial court assumed it had jurisdiction over him, put him on trial and sentenced him to pay a fine to the state. Yet the Ninth Circuit Court of Appeals, in apparent disregard for the decisions rendered by this Court in *Albrecht* and in *Bain*, affirmed the decision of the U. S. District Court of the District of Hawaii that there was "nothing wrong" with the way the state had put Plaintiff-Appellant on trial and had sentenced him to pay a fine to the state even though the court lacked jurisdiction over the offenses he was charged with having committed in his case .

Respectfully submitted,

Clarence Shak

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APPENDIX

Memorandum filed in the United States Court of Appeals for the Ninth Circuit on August 22, 1995 acknowledged by Cathy A. Catterson, Clerk, U. S. Court of Appeals.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLARENCE SHAK,	) No. 94-16505
	)
Plaintiff-Appellant,	) D. C. No.
	) CV-94-00282-SPK
v.	)
	)
KEITH TANAKA, individually and as police officer in the City and County of Honolulu; KATHERINE DASHIELL, individually and as a Judge in the District Court of the First Circuit, State of Hawaii; STATE OF HAWAII, et al.,	) MEMORANDUM*
	)
Defendants-Appellees.	)

Appeal from the United States District Court
for the District of Hawaii
Samuel P. King, District Judge, Presiding

Submitted August 16, 1995**

Before: ALARCÓN, FERNANDEZ, and RYMER, Circuit Judges.

Clarence N. S. Shak appeals pro se from the district court's summary judgment for defendants in his action brought under 42 U.S.C. §1983, which alleged a violation of his rights under the Fourth and Fourteenth Amendments.

On appeal, Shak contends that the district court erred as a matter of law by holding that he was not entitled to: (1) a judicial determination of probable cause before being required to return to court for a hearing on misdemeanor charges; and (2) a written summary of the misdemeanor charges against him, setting forth the essential facts constituting the offenses charged and demonstrating that there was probable cause to believe that those offenses had been committed by him. We have jurisdiction under 28 U.S.C. §1291, and we affirm.

I
Background

On December 23, 1993, at approximately 4:45 p.m., after being warned once that he was creating a safety hazard by standing in the street, Shak was arrested by defendant police officer Tanaka for violating local laws prohibiting pedestrians from walking on roadways, see Haw. Rev. Stat. §291C-76 (1985), soliciting rides, business or attention of motorists, see Haw. Rev. Stat. §291C-77 (1985), and refusing to provide identification, see Haw. Rev. Stat.§291C-172 (1985). Shak was then taken by officer Tanaka to the Honolulu Police Station where he was finger-printed, booked,

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

and then released on approximately $60.00 bail at approximately 6:30 p.m. Upon his release, Shak was given a bail receipt informing him of the three misdemeanor charges against him and the time he was to appear in court for a hearing on such charges.

On December 29, 1993, Shak appeared for arraignment in the District Court for the First Circuit, Honolulu Division. After having the charges against him read orally, Shak refused to enter any plea, arguing that the court lacked jurisdiction over the subject matter of his case because no complaint, affidavit, or other formal accusation had been filed against him charging him with any act which violated any law. Consequently, the court entered a plea of "not guilty" on Shak's behalf and set the date of trial for March 17, 1994.

On March 17, 1994, Shak again appeared at court, the charges against him were again read orally, Shak again refused to enter a plea, and the court again entered a plea of "not guilty" on Shak's behalf. Shak then moved to dismiss the charges against him on the ground that the court lacked jurisdiction, which the court denied. The trial proceeded, officer Tanaka testified as to what he had seen Shak doing which led him to believe that he was violating the law, and the court found Shak guilty of all three of the charges based on Tanaka's testimony. Shak was subsequently fined $35, and he did not appeal his conviction.

II
Standard of Review

We review de novo the district court's grant of summary judgment. Hansen v. United States, 7 F.3d 137, 138 (9th Cir. 1993). Summary judgment is appropriate if, viewing the evidence in the light most favorable to the non-moving party, no genuine issues of material fact remain and the

moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Hansen, 7 F.3d at 138.

III
Merits

A. Judicial Determination of Probable Cause

Shak contends that the district court erred by holding that he was not entitled to a judicial determination of probable cause before being required to return to court for a hearing on misdemeanor charges. This contention lacks merit.

The Supreme Court "has expressed a preference for the use of arrest warrants when feasible." Gerstein v. Pugh, 420 U.S. 103, 113 (1975). Nonetheless, "a [police officer]'s on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest." See id. at 113-114. A person arrested and held in custody for trial, however, is entitled to a timely judicial determination of probable cause. Id. at 114. The Supreme Court has explained that "[o]nce the suspect is in custody. . ., the reasons that justify dispensing with the magistrate's neutral judgment evaporate" while "the suspect's need for a neutral determination of probable cause increases significantly," noting that "prolonged detention may be more serious than the interference occasioned by arrest." Id. at 114.

Here, Shak concedes that: (1) officer Tanaka had probable cause to arrest him; and (2) his detention at the Honolulu Police Station for one hour and forty-five minutes was not excessive. Thus, the two Fourth Amendment concerns discussed in Gerstein, a warrantless arrest in which the police officer's judgment concerning probable cause is

mistaken and prolonged detention, are not present in the instant case.

In addition, the Supreme Court has "stopped short of holding that jurisdictions were constitutionally compelled to provide a probable cause hearing immediately upon taking a suspect into custody and completing booking procedures." see County of Riverside v. McLaughlin, 500 U.S. 44, 53-54 (1991), and "acknowledged the burden that proliferation of pretrial proceedings places on the criminal justice system and recognized that the interests of everyone involved, including those persons who are arrested, might be disserved by introducing further procedural complexity into an already intricate system." Id.

Accordingly, the district court did not err as a matter of law in dismissing Shak's claim that he had a right to a probable cause hearing before being required to return to court.

B. Written summary of Charges

Shak contends that the district court erred by holding that due process did not entitle him to a written summary of the misdemeanor charges against him, setting forth the essential facts constituting the offenses charged and demonstrating that there was probable cause to believe that those offenses had been committed by him. This contention lacks merit.

"The grand jury requirement of the Fifth Amendment is not applicable to the states, and accordingly, prosecution via an information is not unconstitutional." James v. Reese 546 F.2d 325, 327-28 (9th Cir. 1976). Moreover, "a misdemeanor conviction may be sought and sustained upon the basis of an unverified Information standing alone."

Church v. United States, 412 F.2d 836, 838 (9th Cir. 1969) (emphasis added). Accordingly, the State of Hawaii was not required to proceed against Shak by indictment.

Under the Hawaii Rules of Penal Procedure, in non-felony cases, the accused is orally apprised of the pending charges in open court. Haw. R. Penal P.§5(b)(1). The Supreme Court of Hawaii, moreover, has rejected the claim that the omission to furnish a copy of a complaint is a jurisdictional defect. Shak v. Doi, 420 P.2d 100, 102 (1966). Here, Shak had the formal charges read to him orally twice and was also given a bail receipt informing him of the charges and the time to appear in court. Shak does not allege, moreover, that he did not understand the nature of the charges against him. Consequently, the district court properly ruled that Shak was not entitled to a detailed written summary of the misdemeanor charges.

AFFIRMED.

Order filed in the United States Court of Appeals for the Ninth Circuit on December 1, 1995 acknowledged by Cathy A. Catterson, Clerk, U. S. Court of Appeals.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLARENCE SHAK,	)	No. 94-16505
	)	
Plaintiff-Appellant,	)	D. C. No.
	)	CV-94-00282-SPK
v.	)	Hawaii (Honolulu)
	)	
KEITH TANAKA, individually and as police officer in the City and County of Honolulu; KATHERINE DASHIELL, individually and as a Judge in the District Court of the First Circuit, State of Hawaii; STATE OF HAWAII, et al.,	)	ORDER
	)	
Defendants-Appellees.	)	
	)	

Before: ALARCÓN, FERNANDEZ, and RYMER, Circuit Judges.

The petition for rehearing is denied.

Judgment filed in the U. S. Court of Appeals for the 9th Circuit on August 22, 1995 and in the U. S. District Court for the District of Hawaii on December 14,1995

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JUDGMENT

= =

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 94-16505
CT/AG#: CV-94-00282-SPK

CLARENCE SHAK

Plaintiff - Appellant

v.

KEITH TANAKA, individually and as police officer in the City and County of Honolulu; KATHERINE DASHIELL, individually and as a Judge in the District Court of the First Circuit, State of Hawaii; STATE OF HAWAII, et al.,

Defendants - Appellees.

APPEAL FROM the United States District Court for the District of Hawaii (Honolulu).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Hawaii (Honolulu) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered August 22, 1995